

# The Antarctic Treaty

## Should we fear for its future?

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## **I. Preface**

I first became interested in this topic as I listened to various people discuss the Antarctic Treaty System. Occasionally one of them would express concern that the pressures of the outside world would, in the not so distant future, bring about the collapse of the Treaty. I do not know whether these negative comments were born out of cynicism or simply an attempt to be realistic. However, I thought it would be worthwhile to do my own research into the subject. At least then, I would have some knowledge to allow me to participate in the debate.

With the seemingly endless reporting of natural disasters and examples of human frailty that the media thrive upon, it is easy to become pessimistic about our political institutions. However, this negativism does a major disservice to the achievements that have been won by hard effort, by determination and by co-operation, since that cold December morning in Washington, DC, in 1959 when the representatives of twelve sovereign States, each with strong interests in the great Southern continent, signed the Antarctic Treaty. (External Affairs – Conference on Antarctica)

## **I. Introduction**

My objective in this Review is to examine the Treaty at different stages of its history in order to assess the chances that it will last for another 50 years. My approach has been to study the writings of various experts on the Antarctic and particularly their views on ‘the future for the Treaty’ and the issues and challenges faced by the Treaty. In this manner, I hope to form a more robust personal opinion on what might lie in store for the Treaty given the issues and challenges that exist today.

I have identified five periods in the Treaty’s history from the nineteen fifties up to the present. During this half-century the Treaty has encountered periods of significant risk. At times the future looked bleak indeed either because of external political pressures or because of internal disagreements. It is useful to try and put ourselves back into the context of the day so that we can appreciate the nature and the impact of conditions as they existed in those earlier times. The periods have been selected to fall at points of historical importance. For example, the first period takes us up to the actual signing of the Treaty itself. The second period then extends to 1972 with the ratification of the CCAS (Convention for the Conservation of Antarctic Seals). The third period extends to 1988 when the minerals convention ,CRAMRA, was concluded (but never ratified). The fourth period takes us to 1998, and the fifth up to the present day.

The Report treats each of these periods in succession. For each period I identify the issues that were ‘top of mind’ at the time. Also, the context for those is outlined by reference to other significant events that were taking place in the world at large. In some cases a future projection was made which I have included for the interesting comparison against the actual course of events. Hindsight is a wonderful thing.

The Review then concludes with a discussion of some possible outcomes that may ensue.

## **I. Historical Perspectives**

### **a) Period up to 1959**

The Antarctic Treaty was born out of conflict and international tension at a time when the nations of the world had only begun to recover from major conflicts in Europe, Japan and Korea. Two 'superpowers', the United States and the Soviet Union emerged from this struggle. Their 'arms race' had escalated into the 'Space Race' with the launching in 1957 of the first satellites into orbit. The great powers, the United States and Russia, vied against each other on the global stage and especially at the UN meetings in New York. Sabre rattling was frequent and the installation of the famous 'hot line' between the Kremlin and the White House only served to emphasise the fragility of the peace. Talk of World War III was not unusual although with the horrors of the hydrogen bomb still fresh in the minds of the public, there was added cause for restraint.

At that time Antarctica was not high in the public consciousness although the exploits of Admiral Byrd had been widely reported in publications such as National Geographic. However, the American military were not blind to the strategic opportunities offered by Antarctica particularly in the areas of flight paths over the pole and as a potential site for intercontinental ballistic missiles. The advent of the Cold War had made the United States very keen to stay one step ahead of the Soviet Union in all matters including the positioning in Antarctica. (Templeton) However the US recognised that there was a dilemma with the various territorial claims that had been made over the years, three of which were overlapping, and of their own position of not having made any claim nor recognising the claim of any other country.

This period reflected post-war thinking when political and strategic issues were foremost in the minds of world leaders. At the philosophical level an intense rivalry, in the form of capitalism vs. communism, fed the political press.

Antarctica was swept up in this maelstrom of mistrust and soon became another forum for its expression.

The strategic value of the Antarctic had become evident with the planning of air routes over the continent. The 'imagining' of vast mineral riches thought to lie beneath the ice compounded the appeal of Antarctica to the military planners. Ideas were floated to exploit these riches. Some were as far-fetched as to use nuclear explosions to melt away the ice. (Obviously, the environmental movement had not yet emerged.) As stated by G.C.L. Bertram 'It is the naïve alone who are convinced that pure science is the sole stimulant – Great resources of men and materials are not employed by even the very powerful without strong reasons'

It was unreasonable to expect that this situation would resolve itself within a short time. Also, at about this time the Russians began making noises about establishing their own bases in Antarctica. The Soviet Union, for the first time since Bellingshausen, had once again become very interested in the Antarctic. They had celebrated 'Antarctic Day' in Moscow in 1948. (Christie) This interest went to the

extent of writing letters to each of the seven claimant nations and the United States, claiming the right to participate in any discussions regarding the governance of Antarctica and that they would not recognise any decisions made in their absence. (Beeby – Whiteman)

This combination of factors led the US president, Dwight D Eisenhower, to invite those countries who participated in the IGY of 1957-1958, including the Soviet Union, to attend a meeting in Washington DC in order to draft an agreement for the joint use of Antarctica.

The discussions in Washington were successful with the issue of sovereignty being the most contentious. The Treaty states then adopted one of their most effective gambits, that of parking irresolvable issues for some future day when minds or circumstances were more propitious. This method of obstacle circumvention allowed progress to continue on some fronts while the members agreed to disagree on others.

At this point, with the remarkable success of the IGY 1957-1958, there was a sense of optimism that perhaps this new approach to multilateral governance was going to work. The collaboration and mutual respect that had not been achieved in politics might yet be attained in science.

#### **Future View ((Bertram):**

A stable alternative to the present form of governance in Antarctica is needed. Geographic scope would be an issue eg the Sub-Antarctic Islands. The suggestion is all land South of 60 degrees S. (this became in fact the Agreed boundary in the Treaty).

Some interesting options put forward by Bertram were:

- a) Recognition of existing claims
- b) Sale of Antarctic Territory
- c) Condominium
- d) Trust Territories
- e) Functional Approach

As it turned out none of these options were chosen.

#### **Issues of the Day:**

Political 'cold war' threats between the US and the Soviet Union

#### **b) Period from 1959 to 1972**

By 1972 the treaty had been in effect for its first decade. There had been two significant additions, namely, the Agreed Measures for Flora & Fauna implemented in 1964, and the Convention for the Conservation of Antarctic Seals that came into being in 1972.

The sixties were a particularly volatile decade on the international stage. Nuclear war over the Bay of Pigs crisis in Cuba was narrowly averted in 1962. In that same year the environmental conservation movement had been jump-started by Rachel Carson's 'Silent Spring'.

The US had begun disarmament talks with the Soviet Union and diplomatic relations had been established between China and the US. As well, the Vietnam War was at its height. Through the sixties the 'flower power' revolution had radically changed the philosophy of life for many of those who survived the decade.

There was cause for hope as well as despondancy.

In the words of Christopher Beeby, New Zealand's foremost expert on the Antarctic Treaty at that time, "Some expectations have been met, rather more have not".

### **Issues of the day:**

De-militarisation and nuclear inspections in the Treaty area

Jurisdiction debate

Mineral exploitation and its link to sovereignty issue

### c) Period from 1972 to 1988

This sixteen year period saw a dramatic increase in the number of countries that joined as either Consultative or Observer members. As a result of de-colonisation the number of sovereign nations in the world community increased to over 150(Parsons). These countries now demanded a say in world affairs and a seat at the table where the major decisions were made. (Myhre)

The number of countries that signed or acceded to the Treaty more than doubled to a total of 38 from the 17 that existed in 1972. Over 80% of the world's population was now represented by an ATCP.

This had both a positive and a negative effect on the ATS. On the plus side it opened up the continent to a broadened world community. This helped defuse the accusation by some countries that the ATS was a clique of imperialist nations bent on protecting their own self interests. It was this criticism that, in 1985, encouraged the United Nations to table a resolution calling for the 'equitable sharing of benefits' of mineral exploitation in the Antarctic. (Myhre)

The period opened with a question as to whether the U.N. could enforce its will in the Antarctic. There were at least two reasons why this was unlikely to happen. First, the membership of the UN Security Council is made up of ATS Consulting Parties. It is unlikely that they would use the UN to dismantle what they have carefully constructed and which from their vantage point works very well. Second, the expanded membership of the ATCP has weakened the case that it is a club of restricted entry. This has reduced the pressure being placed on the UN to intervene.

The Antarctic Treaty allowed for a special review meeting to be held thirty years after its becoming effective. This will fall in 1991 and would perhaps offer an opportunity for major changes to the Treaty. However, such a meeting has not been called at this point. It is possible that the Minerals Regime issue could act as the catalyst for such a meeting.

It is worth noting that, should a Review meeting be held, the Treaty can be changed by a majority vote of the Contracting Parties while at a Consultative meeting the Treaty can be changed only by unanimous consent of the Consultative Parties.

During this period the question of jurisdiction was resolved and the principle accepted that any transgressor was to be made accountable through the legal system of his or her national system of jurisprudence. It is the individual's *nationality* rather than the *territory* determined who would deal with the issue. This neatly avoided the question of sovereignty over Antarctic territory.

### **Issues of the Day:**

UNCLOS III – How can the Antarctic Treaty and the LOS provisions be reconciled?  
UN involvement in Antarctica via the Malaysia Group, the 'Question of Antarctica'  
Emergence of the Environmental & Conservation movement

### d) Period from 1988 to 1998

This period saw the aftermath of the failure to ratify CRAMRA and the beginning of the healing process. This disappointing result has perhaps been the event that best illustrates the resilience of the ATS. In addition to finalising the Protocol on the Environment at Madrid in 1991 the ATCM meetings were shifted to be held annually rather than bi-annually as had been the practice up to that time.

Australia came under tremendous pressure by NGO's such as Greenpeace during the final ratification period of the CRAMRA convention. In addition, at this time there occurred two high profile marine incidents that showed dramatically the risks associated with shipping in Polar regions. These were the Exxon Valdez disaster off the coast of Alaska and the xxxx grounding off the Antarctic Peninsula. As a result, Australia did an about-face and decided not to ratify CRAMRA (although they had signed it). France soon followed suit and then New Zealand.

At this point, environmental concerns grabbed the spotlight and attention turned to the formulation of a comprehensive agreement for the protection of the environment. It took final form in 1991, in Madrid, with the so-called 'Andersen draft'. This agreement has since become known as the Madrid Protocol – Protocol on Environmental Protection. The ability of the Treaty membership to re-assess its priorities and pursue a more conducive area of effort is its greatest strength.

In addition five more countries acceded to the Treaty. This broadening of the membership plus the indefinite ban on minerals exploitation has greatly reduced the clamour from the non-member states. The removal of the apartheid regime in South Africa in 1994 also acted as a very positive step for the Treaty. This was especially so because South Africa are one of the founding Consultative Parties.

Time and again, when confronted with the thorniest of issues, the member states, through dialogue and good will, have been able to do what's best for Antarctica. As stated by Joyner, "... Through sustained shared experience, a certain sense of mutual obligation and shared interest arises among the participant governments. This mutual, collective obligation furnishes the normative cement that binds the Antarctic Treaty System together"



### **Issues of the Day (Chaturvedi, Parsons, Dodds):**

- ATS / UN / NGO relationship
- Membership requirements, should they be revised eg should having a national base in Antarctica still be a mandatory requirement
- Should there be an ATS Secretariat?
- Lack of a 'liability regime' within the Protocol
- Effectiveness of CCAMLR particularly with respect to non-member states
- Need for water
- Rise of India and China and the need for minerals and fish

### **e) Period from 1998 to 2005**

During these eight years the nature of the challenges has changed for the Treaty members. This is because the steps that have been taken so far have been quite effective particularly CCAMLR and the Protocol.

Two significant steps were taken during this current period and they have resolved two of the most contentious issues with the Treaty.

First, a permanent Secretariat has been established in Buenos Aires, Argentina. Jan Huber from the Netherlands, has been named as the Treaty's first Executive Secretary. This will ease the administrative burden on the Treaty Parties and especially with the ATCM's now being held annually.

Second, the Liability Annex has been completed for the Protocol (Annex VI) Not unexpectedly this has been a difficult item on which to gain agreement. New Zealand were particularly effective in progressing this addition to the Protocol. (Hughes, Gilbert)

In addition the country with the loudest voice urging UN intervention has begun to change its views and is now supporting the Treaty. Malaysia are now considering joining the ATS (Tepper/Haward). Also, in 2002 UN resolution 57/51 reaffirmed the international acceptability of the ATS (Beck).

### **Issues of the Present (Hughes, Gilbert, Dodds):**

Bio-prospecting

Information sharing where commercial value is at stake

IUU fishing and the depletion of the toothfish & other species

Tourism regulation

Non-governmental organisations (NGO's)

Effectiveness of CCAMLR

Effectiveness of the Protocol

Ice(water) as a resource is not covered by any regulations

Treaty membership criteria

Sovereignty is not resolved

## **Future Outlook – Beyond 2005**

Certainly, over the past 45 years, there have been periods when the Treaty has come under strain. And yet, we now find ourselves well into the new millennium with planning already in place for the 2006 Antarctic Treaty Consultative Meeting (ATCM), number XXIX to be held in Edinburgh next June.

As shown in the previous page the list of current issues is not insignificant. Nevertheless, many weaknesses in the Treaty have been addressed over the years such as jurisdiction, the Secretariat, annual meetings, extended membership, and environmental regulation. The two most complex continue to be the issues of sovereignty and mineral exploitation. Perhaps the current impasse on these is a blessing in that the alternative has been to place them for future generations to address (Dodds).

The Antarctic Treaty has come through some perilous situations. In certain ways it has acted as a refuge in a storm. There is a sense that if mankind cannot successfully administer Antarctica with its objectives of knowledge and peace then what hope is there for the rest of the Earth.

It is important to ask the right questions. If we view expansion of tourism or exploitation of minerals as defining failure of the Treaty then we may be in for disappointment. Tourism is likely to expand significantly (Russ, Mortimer) especially in the Peninsula region. Mineral exploitation was imminent with CRAMRA. Now, with the Environmental Protocol in place, the environmental safeguards are at least established.

With respect to minerals exploitation CRAMRA may be the best convention that can be produced (Chaturvedi). However, the fundamental question is not how best to exploit minerals but rather; should there be any mineral exploitation at all? The existing indefinite postponement may be the best outcome. Also, the sovereignty question and the global benefits sharing question remain as obstacles to a truly effective minerals exploitation solution.

I will close with a quote from a recent book by Anne Marie Slaughter called *A New World Order*:

“The only way most states can realise and express their sovereignty is through participation in the regimes that make up the substance of international life” (attributed to Chayes & Chayes – *The New Sovereignty: Compliance with International Regulatory Agreements*)

In this regard the ATS is very high on the list of desirable international organisations following the UN and the EU (Sanson). This lofty profile has been well earned and I hope has been well described in the Review above. The Antarctic Treaty has never been in a better position and is prepared to deal with the issues that, no doubt, it will encounter in the decades ahead. However, we must always be asking ourselves, if we adopt a proactive approach, “What do we want Antarctica to be?”

## **APPENDICES**

Appendix A – References

Appendix B – Antarctic Treaty Framework

Appendix C – Antarctic Treaty Timeline

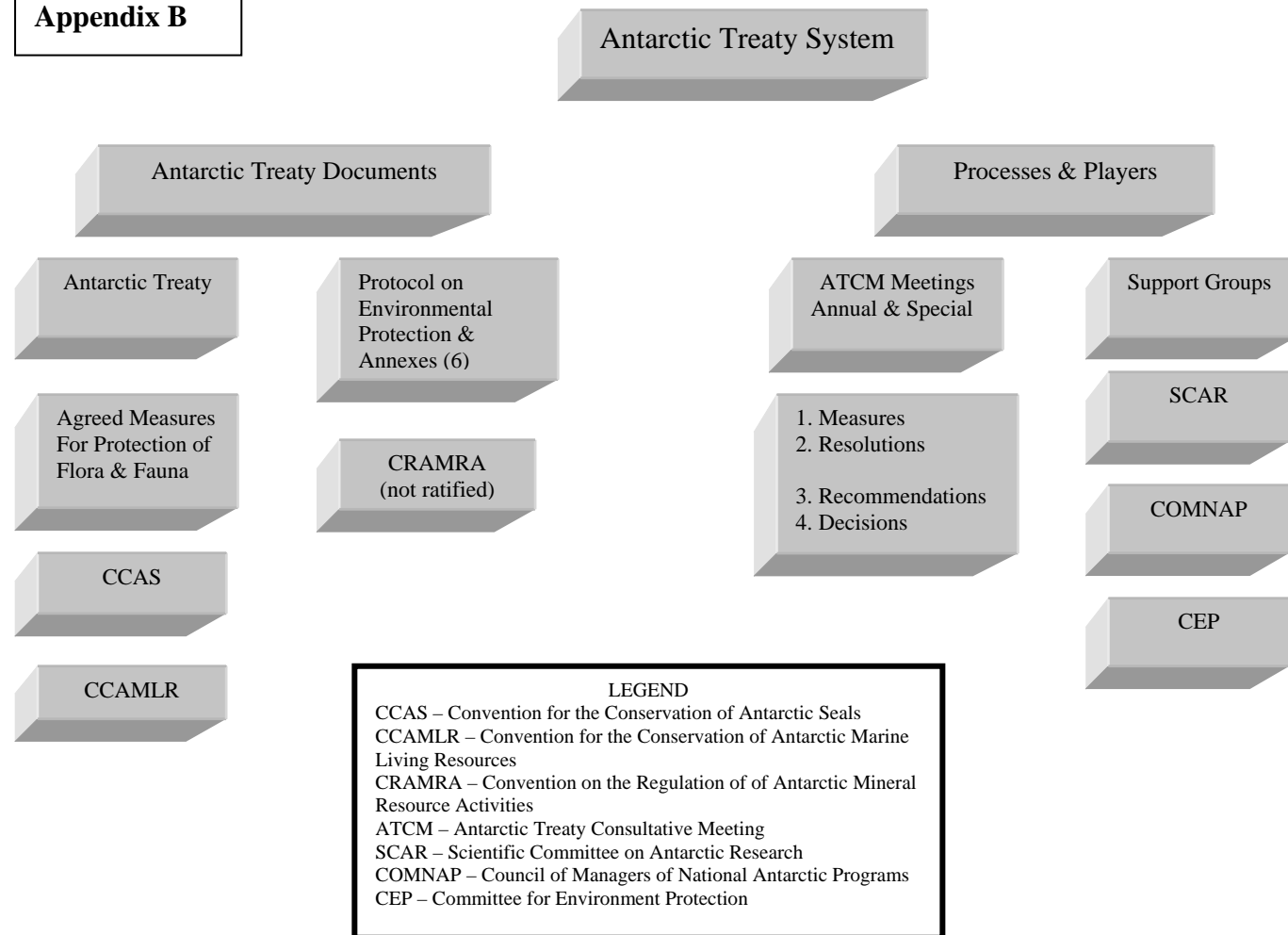
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## Appendix B



## **APPENDIX C**

### **ANTARCTIC TREATY TIMELINE**

The table below highlights the most significant events to have affected the evolution of the Treaty of the past 45 years.

<b>DATE</b>	<b>EVENT</b>
<b>1959</b>	Antarctic Treaty signed in Washington by 12 founding countries out of IGY
<b>1961</b>	Antarctic Treaty comes into effect
<b>1964</b>	Convention for the Protection of FLORA & FAUNA signed
<b>1969</b>	Lindblad Explorer initiates Antarctic Tourism
<b>1972</b>	Convention for the Conservation of Antarctic Seals signed
<b>1978</b>	20 <sup>th</sup> country signs as ATS member (Bulgaria)
<b>1980</b>	Convention for the Conservation of Antarctic Marine Living Resources signed
<b>1983</b>	China and India sign as ATS members
<b>1985</b>	UN Resolution 40/156 tabled by Malaysia Group promoting the 'Common Heritage of Mankind' concept
<b>1987</b>	35 <sup>th</sup> country signs as ATS member (Greece)
<b>1988</b>	Convention on the Regulation of Antarctic Mineral Resource Activity
<b>1989</b>	Decision by Australia and France not to ratify CRAMRA
<b>1991</b>	Protocol on Environmental Protection (Madrid Protocol)
<b>1991</b>	ATCM's move to annual schedule from bi-annual
<b>1994</b>	Apartheid ends in South Africa
<b>1997</b>	Madrid Protocol comes into effect
<b>2001</b>	Endorsement of Treaty Secretariat to be located in Buenos Aires
<b>2001</b>	45 <sup>th</sup> country signs as ATS member (Estonia)
<b>2004</b>	Secretariat came into effect
<b>2005</b>	Protocol Liability Annex adopted